

REMARKS

By the foregoing Amendment, Claims 24, 25, 29 and 30 have been amended.

Favorable reconsideration of the application is respectfully requested.

Claims 24 and 26-28 were rejected under 35 U.S.C. §102(e) on the grounds of anticipation by Diaz et al., published application US 2004/0087964, published May 6, 2004. Diaz et al. issued as Patent No. 7,018,394 on March 28, 2006. The Examiner indicated that the provisions of 35 U.S.C. §102(e) as amended in 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000, and that therefore the prior art date of the reference is determined under 35 U.S.C. §102(e) prior to the amendment of 35 U.S.C. §102(e). However, according to Diaz et al., PCT/US02/00897 was filed on January 10, 2002, which is after November 29, 2000, so that the current provisions of 35 U.S.C. §102(e) would seem to apply to this reference.

The present application properly claims domestic priority to the filing date of November 9, 2001 of provisional application 09/990,759. The Examiner has applied Diaz et al. as having a prior art date from the filing of the provisional application 60/260,742, filed on January 10, 2001. Diaz et al., page 4, paragraph 42 (corresponding to column 7, lines 13-31 of Diaz et al. '394) was cited as disclosing a longitudinal slot formed in the upper wall of the elongated tubular member and extending a majority of the length of the elongated tubular member, leaving up to about 10cm with no slot. Diaz et al. states "The sheath 12 is approximately 80 centimeters in length...." and "The slit 34 is

approximately 60 centimeters in length and extends from the proximal end of the sheath 12 to a position intermediate the proximal and distal ends of the sheath 12.” It is respectfully submitted that the Diaz et al. provisional application 09/990,759 contains no such disclosure. At page 2, second line from the bottom, to page 3, line 1, Diaz et al. provisional application 09/990,759 only discloses “Also shown in FIG. 2a, the proximal portion 24 contains a longitudinal slit. This slit extends from the proximal end proximal portion 24 to stopper 20.” It is therefore respectfully submitted that Diaz et al. is not entitled to a prior art date as to the feature of “a longitudinal slot formed in the upper wall of the elongated tubular member and extending a majority of the length of elongated tubular member, leaving up to about 10cm with no slot,” as is recited in Claim 24.

It is therefore respectfully submitted that the application of Diaz et al. under 35 U.S.C. §102(e) is inappropriate, and that the rejection of Claims 24 and 26-28 under 35 U.S.C. §102(e) on the grounds of anticipation by Diaz et al. should be withdrawn.

Claims 25, 29 and 30 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Diaz et al. in view of Ahmed. The Examiner referred to Diaz et al. as teaching all the elements of Claim 16, which was previously cancelled. As to Claim 25, the Examiner acknowledged that Diaz et al. does not disclose "an angled-configured guide." Ahmed was cited as disclosing angled winged flanges. In discussing Diaz et al., the Examiner also took the position that a tubular body inherently has an angled configuration on its outer surface. In order to clarify the nature of the angled configuration of the invention that is different from the outer surface of a tubular body, Claim 24 has been amended to recite “the upper wall of the elongated tubular member

adjacent to the slot has a V-shaped configuration on the outside surface of the hollow, elongated tubular member.” Support for this amendment can be found in the specification at page 5, lines 21-24. Furthermore, Claims 25-30 depend from Claim 24, and it is noted that Ahmed also fails to teach, disclose or suggest “a longitudinal slot formed in the upper wall of the elongated tubular member and extending a majority of the length of elongated tubular member, leaving up to about 10cm with no slot,” as is recited in Claim 24. It is therefore respectfully submitted that Claims 25, 29 and 30 are novel and inventive over Diaz et al. and Ahmed, taken either individually or in combination, and that the rejection of Claims 25, 29 and 30 on the grounds of obviousness from Diaz et al. in view of Ahmed should be withdrawn.

In light of the foregoing amendments and remarks, it is respectfully submitted that the application should now be in condition for allowance, and an early favorable action in this regard is respectfully requested.

Respectfully submitted,

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